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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

AARON PAIGE,

Defendant and Appellant.

E068763

(Super.Ct.No. 16CR029281)

OPINION

APPEAL from the Superior Court of San Bernardino County. Corey G. Lee,
Judge. Affirmed.

Forest M. Wilkerson, under appointment by the Court of Appeal, for Defendant
and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney
General, Julie L. Garland, Assistant Attorney General, Eric A. Swenson and Felicity
Senoski, Deputy Attorneys General, for Plaintiff and Respondent.

I

INTRODUCTION

Defendant and appellant Aaron Paige appeals after the transfer of his probation from Orange County to San Bernardino County. Upon the transfer, the San Bernardino County Probation Department recommended additional terms and conditions of probation imposed by San Bernardino County “to ensure officer safety and offender compliance.” Defendant objected to the additional conditions. On appeal, defendant argues the San Bernardino County Superior Court had no jurisdiction to modify the terms of his mandatory supervision because no change in circumstance existed to justify the modification. We reject this contention and affirm the judgment.

II

FACTUAL AND PROCEDURAL BACKGROUND

On November 30, 2015, in Orange County, California, defendant unlawfully took and drove a vehicle of another without permission and with the intent to permanently deprive the owner of the vehicle. Defendant also drove the vehicle knowing his California driver’s license was suspended.¹

On December 1, 2015, the Orange County District Attorney’s Office filed a felony complaint charging defendant with felony unlawfully taking or driving a vehicle (Veh. Code, § 10851, subd. (a); count 1), felony false personation (Pen. Code, § 529,

¹ Defendant waived a probation report, and therefore, a summary of the factual background is taken from defendant’s plea form.

subd. (a)(3); count 2)), misdemeanor false representation to a peace officer (Pen. Code, § 148.9, subd. (a); count 3), misdemeanor possession of burglary tools (Pen. Code, § 466; count 4), and misdemeanor driving on a suspended or revoked license (Veh. Code, § 14601, subd. (a); count 5).

On December 9, 2015, pursuant to a plea agreement, defendant pled guilty to counts 1 and 5. In return, the remaining charges were dismissed, and defendant was placed on formal probation for a period of three years on various terms and conditions of probation.

On January 5, 2016, a bench warrant was issued for defendant's arrest in connection with a probation violation.

On May 9, 2016, the Orange County Superior Court held a probation violation hearing. At that time, the court recalled defendant's arrest warrant, and defendant admitted that he had violated his probation. The court then reinstated defendant's probation on the same terms and conditions of probation as previously imposed, and ordered defendant to serve 90 days in county jail with 52 days of credit for time served.

On June 3, 2016, the Orange County Probation Department filed a notice and motion to transfer defendant's case to San Bernardino County.

On August 11, 2016, after the San Bernardino County Probation Department verified that defendant had permanently relocated to reside in the city of Victorville, county of San Bernardino, the Orange County Superior Court granted the motion to transfer defendant's case to the San Bernardino County Superior Court.

On September 13, 2016, the San Bernardino County Superior Court accepted jurisdiction over defendant and the matter was set for a probation modification hearing. Defendant was ordered to appear at the probation modification hearing set for October 13, 2016.

On September 26, 2016, the San Bernardino County Probation Department filed a report requesting additional terms and conditions in San Bernardino County in order to ensure officer safety and offender compliance be added to defendant's probationary terms and conditions. In relevant part, the proposed additional terms and conditions defendant challenges were as follows: (1) "Report to the probation officer in person immediately/upon release from custody and thereafter once every fourteen (14) days or as directed" (term No. 004); (2) "If you are removed from the United States, you are to report to the Probation Officer by phone or mail within fourteen (14) days of your release from immigration custody and inform Probation of your address and phone number" (term Nos. 004A/004B); (3) "Keep the probation officer informed of place of residence and cohabitants and give written notice to the probation officer twenty-four (24) hours prior to any changes" (term No. 008AA); (4) "Submit to, and cooperate in, a field interrogation by any Peace Officer at any time of the day or night" (term No. 0042); and (5) "Carry at all times a valid California driver's license or Department of Motor Vehicles identification card containing your true name, age and current address, and display such identification upon request by any peace officer and not use any other

name for any purpose without first notifying the Probation Officer” (term Nos. 043A/043B).

On October 13, 2016, defendant failed to appear at the scheduled probation modification hearing in the San Bernardino County Superior Court. The court then issued a bench warrant for defendant’s arrest and declared defendant a fugitive.

The probation modification hearing was eventually held on July 17, 2017. Defendant was present and in custody. Defendant’s trial counsel objected to 16 of the terms and conditions of probation, arguing that the San Bernardino County Probation Department was “attempting to add additional terms and conditions that weren’t imposed in Orange County.” Defense counsel further asserted, “We would object to any terms being added today that were not agreed upon by [defendant] at the time of his plea or imposed at any time in Orange County. It’s our position that simply transferring into another county is not a sufficient change in circumstances to warrant additional terms and conditions being imposed. So just for the record those in [defendant]’s case would be terms 4, 4A, 4B, term 6, term 7, term 8, 8A and 8B, 8F, 17A, 17B, 17B1, 17C, 42, 43A, 43B, and that would be it.”

The prosecutor replied: “Penal Code Section 1203.2(B)(1) has the probation officer and the District Attorney even to modify the terms of supervision the defendant here, or [defendant], as requested to transfer into this county. The probation officer has listed terms that it deems to be related to his rehabilitation and his supervision on probation as we’ve discussed in chambers. [¶] People’s position that all the terms stated

are that there's a nexus to his supervision as rehabilitation with the exception of the term for not leaving the state. We are in agreement with defense that that's not a term that is valid and so we would agree and submit on defense's request to have that term not be added in this transfer. [¶] But other than that, all the terms I think are actually related to the defendant's supervision are common terms in this County and they are able to be added at this time pursuant to the Penal Code."

The trial court recalled the bench warrant and reinstated defendant's probation. The court imposed the terms previously ordered in Orange County, as well as the additional terms requested by the San Bernardino County Probation Department, with the exception of term No. 7 (not leave the state of California without permission). In addition, the court modified term No. 043A, which required defendant to carry valid identification at all times, by striking that the identification had to be a California driver's license or a Department of Motor Vehicles identification card. The court explained: "The terms, as far as the terms are concerned, we did discuss that and I am going to impose all of the terms with the exception of term number 7 and term number 43A, a California driver's license or DMV identification card is not required. However, the defendant is to carry at all times a valid identification card in whatever form, but it must be legally valid." The court further stated: "Yes, valid government issued ID card. And as for the terms that are being objected to, it appears to me as we discussed in conference that those terms are—not only does it have nexus, but it has—it's necessary in order for

probation to properly supervise the defendant in this case, so those will be added.”²

Defense counsel thereafter reviewed with defendant the terms and conditions of his probation. Defendant informed the court that he had reviewed the terms and conditions of his probation, that he understood those terms and conditions, and that he agreed to abide by the terms and conditions of his probation.

On July 19, 2017, defendant filed a timely notice of appeal.

III

DISCUSSION

Defendant argues the trial court acted in excess of its jurisdiction by imposing five additional terms of defendant’s probation because the court’s modification was not based on a change in defendant’s circumstances.³ Specifically, defendant asserts that the transfer of supervision to San Bernardino County did not constitute a change in circumstances, and absent a change in circumstances, his probationary terms and conditions could not be modified. Defendant believes that the additional conditions not previously imposed by the Orange County Superior Court must be stricken. The People respond the court had jurisdiction to modify defendant’s probationary terms because a

² The trial court also noted that defendant’s probation was set to expire on December 8, 2018. Specifically, the court stated, “The expiration as stated in here I believe is December 8, 2018.”

³ Although defense counsel objected to 16 terms and conditions of defendant’s probation, as defendant notes, several are overlapping and/or the record reflects that some of the terms and conditions are substantially similar to terms previously ordered in Orange County. On appeal, defendant only challenges term Nos. 004, 004A/004B, 008A, 042, and 043A/043B.

change in circumstances, namely defendant's transfer of his probation to a new probation department and court with differing standards of practice, justified the modification.

A trial court generally has discretion in setting the appropriate terms and conditions of probation, parole, or supervised release: "In general, the courts are given broad discretion in fashioning terms of supervised release, in order to foster the reformation and rehabilitation of the offender, while protecting public safety. [Citations.] Thus, the imposition of a particular condition of probation is subject to review for abuse of that discretion. 'As with any exercise of discretion, the court violates this standard when it imposes a condition of probation that is arbitrary, capricious or exceeds the bounds of reason under the circumstances. [Citation.]' [Citation.]" (*People v. Martinez* (2014) 226 Cal.App.4th 759, 764.)

Penal Code section 1203.9, subdivision (a)(1), governs the transfer of probation cases from one county to another and provides in pertinent part: "[W]henever a person is released on probation or mandatory supervision, the court, upon noticed motion, shall transfer the case to the superior court in any other county in which the person resides permanently, meaning with the stated intention to remain for the duration of probation or mandatory supervision, unless the transferring court determines that the transfer would be inappropriate and states its reasons on the record." Pursuant to subdivision (b) section 1203.9, "The court of the receiving county shall accept the entire jurisdiction over the case effective the date that the transferring court orders the transfer."

The procedure for transferring a case to another county is outlined in California Rules of Court, rule 4.530. (See Pen. Code, § 1203.9, subd. (f) [“Judicial Council shall promulgate rules of court [] procedures” for the transfer of probation cases].) Subdivision (h)(1)(B) of rule 4.530 provides “The receiving court and receiving county probation department may impose additional local fees and costs as authorized.” Further, subdivision (g) of rule 4.530 entitled “Transfer” provides in subsection (6), “Upon transfer the probation officer of the transferring county must transmit, at a minimum, any court orders, probation or mandatory supervision reports, and case plans to the probation officer of the receiving county.”

Neither Penal Code section 1203.9 nor the California Rules of Court, rule 4.530 specifically address whether probation conditions can be modified upon transfer to another county. Penal Code section 1203.3, subdivision (a), states “The court shall have authority at any time during the term of probation to revoke, modify, or change its order of suspension of imposition or execution of sentence.” This section “broadly states the court’s power to modify.” (*People v. Cookson* (1991) 54 Cal.3d 1091, 1100 (*Cookson*).) A defendant is subject to notice, a hearing, and reasons for the modification to be placed on the record before the modification. (Pen. Code, § 1203.3, subd. (b).)

A court can modify a term of probation at any time before the expiration of that term and need not wait until a probation violation occurs. (*Cookson, supra*, 54 Cal.3d at p. 1098; see *People v. Leiva* (2013) 56 Cal.4th 498, 505 (*Leiva*).) In *Cookson*, the defendant was ordered to pay restitution for diverting construction funds at the time that

his probation was granted, but the probation department set up an incorrect payment schedule resulting in insufficient funds being paid by defendant on the restitution when his probation term was set to expire. (*Cookson*, at p. 1094.) The superior court extended the time for probation in order for the defendant to be supervised while completing the payments on restitution. (*Id.* at pp. 1094-1095.)

The California Supreme Court noted that “ ‘An order modifying the terms of probation *based upon the same facts* as the original order granting probation is in excess of the jurisdiction of the court, for the reason that there is no factual basis to support it.’ ” (*Cookson*, *supra*, 54 Cal.3d at p.1095; see *Leiva*, *supra*, 56 Cal.4th at p. 505 [“ ‘A change in circumstances is required before a court has jurisdiction to extend or otherwise modify probation.’ ”].) Although the defendant had complied with all of the probation conditions, and the miscalculation of the monthly payments was solely the fault of the probation officer, our Supreme Court determined “the Court of Appeal correctly determined that a change in circumstance could be found in a fact ‘not available at the time of the original order,’ namely, ‘that setting the pay schedule consistent with [the] defendant’s ability to pay had resulted in defendant’s inability to pay full restitution as contemplated within the original period of probation.’ ” (*Cookson*, at p. 1095.)

The concurring opinion agrees that “a defendant relocating to a new county constitutes a ‘change in circumstances’ that confers jurisdiction on a court to modify the terms of that defendant’s probation. [Citation.]” The concurrence, however, asserts that “this does not mean that the trial court may impose probation terms afresh, as in a

de novo resentencing. Rather, the jurisdiction to modify is limited to changes to the original terms that are based on the changed circumstances.” The concurring opinion also states, “. . . I disagree with the opinion to the extent it implies that the salient test is whether the new conditions are ‘reasonably related to defendant’s offenses’ and to his ‘rehabilitation.’ This is our inquiry when we review the validity of probationary terms imposed at an original sentencing.” The concurrence appears to suggest that once a trial court has jurisdiction to modify a defendant’s probationary terms, a court does not need to conduct a reasonableness inquiry under *Lent*.

Contrary to the concerns raised in the concurring opinion, we are by no means implying that a modification of probationary terms is the same as a de novo resentencing, or that jurisdiction to modify is jurisdiction to resentence anew, or that a trial court’s jurisdiction to modify probationary terms is unfettered. Rather, we find, a trial court must first determine whether a change in circumstances has occurred before a court has *jurisdiction* to modify a defendant’s probationary terms and conditions. (*Leiva, supra*, 56 Cal.4th at p. 505; *Cookson, supra*, 54 Cal.3d at p. 1095.) And, once the required change in circumstances is found, the trial court must still determine whether the modified probationary terms and conditions meet the *Lent*⁴ reasonableness test and pass constitutional muster. (*Lent, supra*, 15 Cal.3d at p. 486; *People v. Olguin* (2008) 45 Cal.4th 375, 379 (*Olguin*); *In re Sheena K.* (2007) 40 Cal.4th 875, 890 [“[a] probation

⁴ *People v. Lent* (1975) 15 Cal.3d 481 (*Lent*).

condition that imposes limitations on a person’s constitutional rights must closely tailor those limitations to the purpose of the condition to avoid being invalidated as unconstitutionally overbroad”]; *People v. Lopez* (1998) 66 Cal.App.4th 615, 628-629.) In *Lent*, the California Supreme Court articulated the following test to determine whether a probation condition constitutes an abuse of discretion: “A condition of probation will not be held invalid unless it ‘(1) has no relationship to the crime of which the offender was convicted, (2) relates to conduct which is not in itself criminal, and (3) requires or forbids conduct which is not reasonably related to future criminality’ [Citation.]” (*Lent*, at p. 486.) “This test is conjunctive—all three prongs must be satisfied before a reviewing court will invalidate a probation term.” (*Olguin*, at p. 379.) “As such, even if a condition of probation has no relationship to the crime of which a defendant was convicted and involves conduct that is not itself criminal, the condition is valid as long as the condition is reasonably related to preventing future criminality.” (*Id.* at pp. 379-380.)

Here, defendant argues that the trial court exceeded its jurisdiction because there was no change in circumstances justifying the new probationary terms. He also asserts “[t]he additional terms were arbitrarily imposed without consideration of the defendant or his individual circumstances.” The People assert the change in circumstances was that defendant’s probation was transferred to a new probation department and court with differing standards of practice. The San Bernardino County Probation Department justified the change in conditions in the probation report based on “[t]hese terms and conditions are commonly used in San Bernardino County in order to ensure officer safety

and offender compliance.” The prosecutor noted the additional terms were necessary to aid in defendant’s rehabilitation and were reasonably related to defendant’s supervision. The trial court explained at the hearing on the modification that the terms were necessary “in order for probation to properly supervise the defendant in this case” and that there was a “nexus.”

The transfer of defendant’s probation in the instant case from Orange County to San Bernardino County constituted a fact not available at the time of the original order. Therefore, the receiving court had jurisdiction to modify defendant’s probationary terms. Upon transfer, defendant’s probation was overseen by a new probation officer and court, with different standards of practice regarding probationers. The San Bernardino County Probation Department’s suggested additions to defendant’s probation conditions were reasonably related to ensure officer safety and defendant’s compliance and rehabilitation. The additional terms were aimed at ensuring defendant’s rehabilitation. The additional terms were also reasonably related to defendant’s offenses, especially term Nos. 043A/043B (carry a valid identification card and display such identification upon request by a peace officer), since defendant had offenses for false personation and false representation to a peace officer. Defendant voluntarily moved to San Bernardino County and San Bernardino County is an expansive county, the largest county in the continental United States. The San Bernardino County Superior Court was entitled to consider defendant’s new circumstances when the case was transferred to San Bernardino County, and to apply new conditions appropriate in supervising San Bernardino County

probationers. The additional conditions are reasonably related to preventing future criminality and necessary in aiding defendant's rehabilitation. (See *Olguin, supra*, 45 Cal.4th at pp. 379-380.) Furthermore, the additional conditions are no more intrusive than the conditions imposed in Orange County requiring defendant to cooperate with the probation officer in a plan of rehabilitation, abide by all reasonable directives of the probation officers, and submit to immediate search of person, home, and property by a law enforcement officer.

The San Bernardino County Probation Department stated specific reasons as to why the additional terms should be imposed in San Bernardino County. San Bernardino County and Orange County are not the same. Besides being different geographically, San Bernardino County has its own set of procedures and conditions to properly supervise a probationer in that county. Once a defendant moves to another county, he or she is supervised by a different probation officer and a different court. Certainly, the court could modify the conditions based on these concerns. In addition, although the San Bernardino County Probation Department noted the additional terms were "commonly used in San Bernardino County in order to ensure officer safety and offender compliance," the San Bernardino County Superior Court made specific findings to justify the additional terms. The San Bernardino County Superior Court noted that the additional terms were "necessary in order for probation to properly supervise the defendant in this case" and that there was a "nexus." Indeed, the record shows that the

additional terms were reasonably related to defendant's offenses, supervision, and rehabilitation.

The San Bernardino County Superior Court was entitled to consider defendant's new circumstances when the case was transferred to San Bernardino County, and to apply conditions it found appropriate in supervising San Bernardino County probationers. Accordingly, we disagree with defendant that the additional terms were "arbitrarily imposed without consideration of the defendant or his individual circumstances." Defendant does not contend the additional conditions are unrelated to the crimes for which he was convicted, are not reasonably related to preventing future criminality, or are not necessary in aiding defendant's rehabilitation. (See *Olguin*, *supra*, 45 Cal.4th at pp. 379-380 [test for valid probation conditions].) The additional conditions were reasonably related to defendant's underlying offenses and the San Bernardino County Probation Department's ability to supervise and rehabilitate defendant. Term Nos. 043A/043B, requiring defendant to carry a valid identification card and display such identification, were clearly aimed at promoting defendant's rehabilitation given the fact that he was charged with false personation and false representation to a peace officer. Similarly, the other additional conditions (e.g., term Nos. 004 [report to probation every 14 days or as directed], 004A/004B [if removed from country, report to probation by phone or mail and inform probation of address and phone number], 008AA [keep probation informed of place of residence and cohabitants], and 042 [submit to, and cooperate in, a field interrogation]) promoted the San Bernardino County Probation

Department's ability to identify, supervise, and rehabilitate defendant. Furthermore, the record shows defendant had violated probation in the past and had been declared a fugitive. The additional terms and conditions therefore were "necessary in order for probation to properly supervise the defendant in this case."

Based on the foregoing, the San Bernardino County Superior Court was justified in modifying the terms of defendant's probation. The additional conditions were reasonably related to the goal of maintaining supervision and safety of the officers, as well as, to defendant's crimes and rehabilitation.

IV

DISPOSITION

The judgment is affirmed.

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CODRINGTON

J.

We concur:

RAMIREZ

P. J.

RAPHAEL

J.

[*People v. Paige* — E068763]

RAPHAEL, J., Concurring.

I join the opinion. I write to explain what, in my view, is the key to the analysis of this recurring issue, the validity of a trial court’s imposition of modified terms of probation after a defendant moves to a new county.

I agree that a defendant relocating to a new county constitutes a “change in circumstances” that confers jurisdiction on a court to modify the terms of that defendant’s probation. (*People v. Cookson* (1991) 54 Cal.3d 1091, 1095.) However, this does not mean that the trial court may impose probation terms afresh, as in a de novo resentencing. Rather, the jurisdiction to modify is limited to changes to the original terms that are based on the changed circumstances. (See *People v. Guzman* (2018) 23 Cal.App.5th 53, 63 [reasoning that because an original search condition “implicitly authorized a search of electronic storage devices” a changed circumstance (the change in law) “gave the trial court jurisdiction” to modify to make that authorization explicit].)

Thus, I agree with the indication in today’s opinion that the new probation terms must have a “nexus,” and I think this is the critical point. Here, the new terms are reasonably based on the original terms and on the change in circumstances. Common monitoring requirements were imposed at the original sentencing, and the new terms are monitoring conditions of the same type; they are reporting or informational requirements that, as the opinion states, are “no more intrusive” than the original monitoring terms. One county used to supervise the defendant; the new county may require similar

monitoring terms that accord with its methods of supervision. A move to a county provides a basis to impose that county's standard, generally applicable supervisory terms.

Because I see that analysis as dispositive, I disagree with the opinion to the extent it implies that the salient test is whether the new conditions are “reasonably related to defendant's offenses” and to his “rehabilitation.” This is our inquiry when we review the validity of probationary terms imposed at an original sentencing. The monitoring terms at issue here easily pass this test, as they are standard terms that likely are reasonably related to the offenses and rehabilitation of *any* defendant. But this test is not sufficient in the context of a modification due to a changed residence.

Indeed, if a new condition is *not* a standard monitoring condition but rather one tailored to the defendant's particular offense or rehabilitation, it is unlikely that a change in residence alone would provide a basis for “modifying” the original conditions to impose it. That is, if the original sentencing court did not impose a particular invasive probationary term, even one it was empowered to impose, the mere fact that a defendant changes residence does not confer jurisdiction on a new court to impose that term in the new county—even if that condition is reasonably related to the offense and to rehabilitation. Jurisdiction to modify is not jurisdiction to resentence anew. A change in residence *does* provide a reasonable basis for modifying standard monitoring terms by adapting them to generally applicable supervisory terms in the new county, as happened here.

RAPHAEL

J.